

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance or for better condition for an appeal.

Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by two (2) months. Applicants authorize the Assistant Commissioner to charge the required fee of \$450 for consideration of this amendment to Deposit Account No. 50-0320.

Claims 16 and 23-42 are pending. In order to advance prosecution and overcome the rejections, claims 23 and 38 are amended wherein the combination of the specific B2 compounds, such as fluthiacet and oxasulfuron are no longer used in combination with glufosinate (A1) and glyphosate (A2) for application to tolerant or resistant soybean crops. Applicants reserve the right to pursue cancelled subject matter in a continuation application.

The amendments to the claims and the remarks made herein are not made for reasons related to patentability and thus, do not prevent the application of the doctrine of equivalents. Support for the amended claims is found throughout the specification.

No new matter is added.

Claims 23, 24, 26-28, 32-34 and 38-42 were rejected under 35 U.S.C. §§102(a) and (e) as allegedly being anticipated by Lee et al (U.S. Patent No. 6,586,367 and corresponding WO 98/09525; “the Lee patent”). Applicants urge that amendments to the claims 23 and 38, without prejudice, render the rejection moot. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Claims 23, 24, 26-28, 32-34, and 38-42 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Lee patent. However, this rejection is respectfully traversed. Applicants urge that in view of the amendment to claims 28 and 38, the instant invention no longer suggests to one skilled in the art the combination fluthiacet and oxasulfuron with glufosinate (A1) and glyphosate (A2) for application to tolerant or resistant soybean crops.

Additionally, Applicants respectfully assert that the Lee patent is defective.

For example, Lee does not appear to be supported by adequate biological examples (see, for example, col. 13-14 of the Lee patent). Further, test descriptions were only provided for pre-

emergence and post-emergence treatments of monocotyledonous and dicotyledonous weeds with other, undisclosed, species of cultivated plants. Notably, herbicidal mixtures and detailed results demonstrating synergy were also not disclosed in the Lee patent.

Against this background, Applicants could not find scientific evidence of synergy between herbicidal combinations for use in different crops with tolerance to, for example, glufosinate, in the Lee patent. Further, no detailed facts were found in either U.S. Patent No. 6,586,367 or in WO 98/09525. This renders a selection of additional herbicidal agents improbable and places an undue burden on the skilled artisan to determine what technical teaching should be used to obtain the claimed synergistic results. Due to this insufficient disclosure, Applicants urge that the claimed invention, therefore, is unobvious over the Lee patent. Therefore, reconsideration and withdrawal of the §103(a) rejection are respectfully requested.

In view of the foregoing, Applicants respectfully request consideration and entry of the instant paper, and reconsideration and withdrawal of the final refusal. In the alternative, Applicants respectfully request consideration and entry of the instant paper, since it places this application into better condition for purposes of appeal.

Respectfully submitted,

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